

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

U.S. DISTRICT COURT  
EASTERN DISTRICT-WI  
FILED

2010 SEP 30 P 12:31

JON V. ANELLI 1990  
10-CV-0853

EQUAL EMPLOYMENT OPPORTUNITY )  
COMMISSION, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
THRIVENT FINANCIAL FOR LUTHERANS, )  
 )  
Defendant. )  
\_\_\_\_\_ )

Civil Action No. \_\_\_\_\_

**COMPLAINT**  
(Jury Trial Demand)

NATURE OF THE ACTION

This is an action under the Americans with Disabilities Act of 1990 ("ADA") and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices and to provide appropriate relief to Gary M. Messier, who was adversely affected by such practices. As alleged below, defendant Thrivent Financial for Lutherans violated the ADA when it inquired about Messier's medical condition and then revealed his confidential medical information to prospective employers, which had a severe and negative impact on his ability to obtain employment from those employers.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343, and 1345. This action is authorized and instituted pursuant to Section 107(a) of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12117(a), which incorporates by reference Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 ("Title VII"), as amended, 42 U.S.C. §§ 2000e-5(f)(1) and (3), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

2. The employment practices alleged to be unlawful were, and are now being, committed within the jurisdiction of the United States District Court for the Eastern District of Wisconsin.

#### PARTIES

3. The plaintiff, the Equal Employment Opportunity Commission (“EEOC”), is the agency of the United States of America charged with administering, interpreting, and enforcing Title VII, and is expressly authorized to bring this action by Section 107(a) of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference Section 706(f)(1) and (3) of Title VII, 42 U.S.C. §§ 2000e-5(f)(1) and (3).

4. At all relevant times, defendant Thrivent Financial for Lutherans (“Thrivent”) has continuously been a fraternal benefits society chartered or incorporated in Wisconsin and Minnesota and doing business in the State of Wisconsin and the City of Appleton, and has continuously had at least 15 employees.

5. At all relevant times, Thrivent has continuously been an employer engaged in an industry affecting commerce under Section 101(5) of the ADA, 42 U.S.C. § 12111(5), and Section 101(7) of the ADA, 42 U.S.C. § 12111(7), which incorporates by reference Sections 701(g) and (h) of Title VII, 42 U.S.C. §§ 2000e(g) and (h).

6. At all relevant times, Thrivent has been a covered entity under Section 101(2) of the ADA, 42 U.S.C. § 12111(2).

#### STATEMENT OF CLAIMS

7. More than 30 days prior to the institution of this lawsuit, Gary M. Messier (“Messier”) filed a charge with the EEOC alleging violations of Title I of the ADA by Thrivent. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. Since at least on or about January 10, 2008, Thrivent engaged in unlawful employment practices at its offices in Appleton, Wisconsin, in violation of Section 102(d)(4) of the ADA, 42 U.S.C. § 12112(d)(4), by revealing to prospective employers Messier's confidential medical information obtained from a medical inquiry. Such disclosure had a severe and negative impact on his ability to obtain employment from those employers.

9. The effect of the practices complained of in Paragraph 8 above has been to deprive Messier of equal employment opportunities, and to otherwise adversely affect his status as an employee.

10. The unlawful employment practices complained of in Paragraph 8 above were intentional.

11. The unlawful employment practices complained of in Paragraph 8 above were, and are, done with malice or with reckless indifference to Messier's federally protected rights.

#### PRAYER FOR RELIEF

Wherefore, the EEOC respectfully requests that this Court:

A. Grant a permanent injunction enjoining Thrivent and its officers, successors, and assigns, and all persons in active concert or participation with them, from revealing confidential medical information about its past and present employees to prospective employers or others.

B. Order Thrivent to institute and carry out policies, practices, and programs which provide equal employment opportunities for Messier, and which eradicate the effects of its past and present unlawful employment practices.

C. Order Thrivent to make Messier whole by providing appropriate back-pay (including the value of fringe benefits) with pre-judgment interest, in amounts to be determined

at trial, and providing other affirmative relief necessary to eradicate the effects of its unlawful employment practices.

D. Order Thrivent to make Messier whole by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in Paragraph 8 above, including relocation expenses, job search expenses, and medical expenses not covered by Thrivent's employee benefits plan, in amounts to be determined at trial.

E. Order Thrivent to make Messier whole by providing compensation for past and future non-pecuniary losses resulting from the unlawful practices complained of in Paragraph 8 above, including (but not limited to) emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial.

F. Order Thrivent to pay Messier punitive damages for its malicious and reckless conduct described in Paragraph 8 above, in amounts to be determined at trial.

G. Grant such further relief as the Court deems necessary and proper in the public interest.

H. Award the EEOC its costs of this action.

JURY TRIAL DEMAND

The EEOC requests a jury trial on all questions of fact raised by its complaint.

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EQUAL EMPLOYMENT OPPORTUNITY  
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Dated: September 30, 2010

s/ John C. Hendrickson

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Dated: September 30, 2010

s/ Jean P. Kamp

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EQUAL EMPLOYMENT OPPORTUNITY  
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